

REPORT

OF THE MAJORITY OF THE

COMMITTEE ON THE JUDICIARY SYSTEM,

RELATIVE TO THE BILL ENTITLED

“AN ACT

TO PROVIDE FOR THE MORE EFFECTUAL PUNISH-  
MENT AND PREVENTION OF CRIMES HERE-  
TOFORE PUNISHABLE WITH DEATH.”

AND THE

REPORT OF THE MINORITY

OF THE

JUDICIARY COMMITTEE,

ON THE

SAID BILL.

Read in the House of Representatives, Jan. 26, 1842.

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## MAJORITY REPORT.

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MR. ELWELL, from the majority of the Committee on the Judiciary System, reported the Bill entitled "An Act to provide for the more effectual punishment and prevention of crimes heretofore punishable with death," as committed, with a recommendation to this House that the same be negatived.

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## MINORITY REPORT.

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MR. SHARSWOOD, from the minority of the Committee on the Judiciary System, made report, viz :

The undersigned members of the Committee on the Judiciary System, to whom was referred Bill No. 9, on the House file, entitled "An Act for the more effectual punishment and prevention of the crimes heretofore punishable with death," dissent from the report of the said committee, recommending the House to negative the said Bill.

In determining to place the reasons of their dissent before the House, in a minority report, they are fully aware that it would be improper for them, even if practicable, to enter at large upon the discussion of a subject of so extended a range as that of capital punishment. To the volumes which have been written on the general heads of Penal Jurisprudence, and to the several treatises on this particular point, must recourse be had by those who desire to bestow upon it that full investigation which it deserves. It will be sufficient on the present occasion to offer a brief statement of those views, which have led us to a different conclusion from that of a majority of the committee.

It must be admitted that the question of the policy of abolishing all capital punishment is one of the utmost importance ; and that a change in our laws in this respect should not be adopted without long and careful consideration by the Legislature. Since the Act of April 22, 1794, the punishment of death has been confined in Pennsylvania to

the crime of murder "perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary."

Should it appear that the commission of this most atrocious offence may be more effectually prevented by a punishment milder and more in harmony with the feelings of humanity, than that which is at present denounced and occasionally inflicted, it is hoped that the Legislature will not be deterred from adopting it by the mere outcry against innovation.

The Bill before the House proposes to substitute, in all cases now punishable with death, imprisonment for life in solitude and at labour; superadding to this the destruction of all the civil rights and relations of the convict, as in case of his natural death. The third section is objectionable, but it is not deemed necessary at present to advert to it.

There are two questions which meet us at the threshold of this inquiry, but which we do not intend to discuss. The first is, whether society possesses in any case the right to take that life which it has not given and cannot restore? We concede for the purpose of the argument, that it has; provided it be shown that the exercise of it is necessary to the existence of society, or even calculated to promote in any degree its security and happiness. The second question is, whether it is imperative upon society, under the sanction of the Divine Law, to inflict this punishment in every case of wilful murder? It would be out of place to enter upon such an inquiry here; and the undersigned are incompetent to the task of settling the meaning of texts of scripture, as to the proper interpretation of which great theologians have differed. Upon this point therefore every member must be left to make his own examination, and be guided in his conclusion by the enlightened dictates of the monitor within his own breast.

The object of all punishment is the prevention of crime. Society knows or ought to know nothing of vengeance. Retributive justice is the province of that Being alone, who can fathom the heart and measure the guilt of an action. It is in this erroneous idea of the object of punishment, that the infliction of death by the sentence of human tribunals, finds its most ordinary support. An ancient lawgiver is said to have answered to one who complained of the severity of his laws, "that the least offence seemed to him to *deserve* death, and that he knew of no greater penalty."

It seems however to be now so well settled that the prevention of crime is the only legitimate object of human punishment, that we consider it enough to consider the practical operation of capital punishments in reference to this great end.

The prevention of crime may be effected in three ways: By disabling the offender from repeating the offence; by his reformation; and, by the terror of the example of his punishment.

It is true that the first is most effectually accomplished by the extirpation of the offender. But surely it will not now be argued that this is the only mode of arriving at this result. The penitentiaries which have been erected within our borders for the reception of



criminals of the higher grades, as completely debar the convict from a repetition of the crime, as a deprivation of his life. Prison breach, under our system, is of so rare occurrence that its consideration as an element in the case, may be laid aside with entire safety.

The reformation of the offender, in other cases particularly held forth, by that which has been denominated the Pennsylvania system, as an important end of punishment, is not at all contemplated in the infliction of death. Yet, if a long course of solitary confinement at labor has the tendency in the case of other criminals, to induce habits of propriety and industry—to turn the mind inward upon itself—to awaken the stings of a seared or sleeping conscience—and to open the heart to moral and religious influences—why should those who have the guilt of a fellow's blood upon them, be debarred from the opportunity of repentance and reconciliation with Heaven? Excluded from evil association—attended constantly by one, able and anxious to impart religious instruction and affectionate counsel—may it not be hoped that even in their case, before that God who gave them life, shall of himself resume the gift, in the solitude of their lonely cells, he will have prepared them for the summons to the final judgment.

We come then to the consideration of the efficacy of the penalty of death as an example. The argument in its favor, derived from this source, it must be admitted, has lost much of its force since executions have ceased to be public. With the great mass of the people, and especially of that class, amongst whom crimes most commonly occur, who cannot or do not read the newspapers, these executions are not known or not thought of. Indeed there is reason to fear that in many cases they are not believed to have taken place—and entire impunity is thought to follow capital crimes. The impression on the public mind, from a short paragraph in the gazette, is of a very light and fleeting nature. It was in view of the demoralizing influence of public executions, that the Legislature took the important step of dispensing with them. Experience demonstrated that crimes of the most heinous character were often committed under the very feet of the gallows, and that an execution in a county, was almost sure to be immediately followed by a fresh addition to the number of the inmates of the prison. But certainly a private execution in a jail-yard, in the presence of a few privileged persons, unaccompanied with that open ignominy and disgrace, the very anticipation of which is so harrowing to all that is left of ingenuity and shame in the breast, is not to be compared in the effect of its example to those public ones which have given place to it.

It ought not to be denied that death is a punishment of unspeakable terror. Yet there are few violent passions, which, in the language of Lord Bacon, *do not mate and master it*. If while this penalty was unsparingly denounced upon mere crimes against property, springing from the more ignoble and sordid propensities of our depraved nature, all experience proved it unsuccessful in deterring men from the commission of such acts, and led to its abolition—still less powerfully may it be expected to operate in the case of a crime which takes its higher aim at human life, and springs commonly from the most ungovernable passions, or the most deep seated malignity.—

Indeed it is observable, that in all countries, with the general amelioration of the penal code, crimes have decreased. It may easily be accounted for. Punishments, which are revolting to the feelings of humanity, as society advances, beget comparative impunity. That confidence in his own superior good fortune, which seems naturally implanted, and in general for wise purposes, in every man, conquers the fear of meeting the fate which the law has decreed. It operates strongly, even in the case of the condemned criminal—and the single solitary chance of executive mercy, will often buoy him up to the very last. An instance of this is related by Mr. Bradford, in his interesting tract on this subject, published in 1795. “Soon after the act to amend the penal laws was passed, two persons were convicted, one of robbery, the other of burglary, committed previous to it. They had the privilege of accepting the new punishment, instead of the old, but they obstinately refused to pray the benefit of the act, and submitted to the sentence of death, in expectation of a pardon. The hopes of one were realized, but the other was miserably disappointed. His unavailing regret, he expressed when his death-warrant was announced, and the horrors which seized him, when he was led to execution, proved at once how terrible is the punishment of death, and how strong are the hopes of pardon.” If hope is found to operate thus powerfully, under such circumstances, how much stronger is its influence at the period of the commission of the offence, when, if the subject be weighed at all, amidst the workings of passion or malignity, a thousand other chances of escape present themselves.

The profound observation of Montesquieu, cannot be too much pondered, in reference to this question. “If we inquire,” says he, “into the cause of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments.” It is certainly not the severity of the penalty, that most effectually deters men from the commission of crime. It is in the nature of man to fear an evil of less magnitude, which is certain and near at hand, more than one of a more serious nature, remote and uncertain. It is not too much to affirm, that no criminal in Pennsylvania, is so likely to escape, as the wilful and deliberate murderer. Experience will sustain the truth of the observation, that two out of every three offenders of this grade, meet either with no punishment at all, or with one entirely too light for its enormity—assigned by law to crimes of a much lower class. No sooner is an individual put on trial for his life, than he at once becomes an object of general interest and sympathy. This is carried to the highest pitch—if youth, sex or beauty, old age, previous good character, or any mitigating circumstances in the case, plead in his favor. The jurors, impannelled to try him, participate in these feelings. They are men—they would be more or less than men if they did not. The solemn obligations of their oaths, become faint before their eyes, in their over-strained anxiety to catch at something, which may reconcile their consciences to a verdict which shall exempt the accused from the fatal doom of the law.—They are instructed by the Court, that if they have a reasonable doubt, that doubt must operate in favor of the prisoner. Jurors,



witnesses, prosecutors, medical men, Attorney Generals and Judges, all join in the conspiracy to palliate the guilt of the offender, and afford him every possible chance of escape. A respectable number of our fellow citizens deny the right of society to take life for any offence, and so extended is this sentiment, that a trial for murder never occurs, in which a number of those returned on the panel for jurors, are not, at their own request, challenged by the Commonwealth, on the ground that they cannot conscientiously find a verdict which shall consign a fellow being to the tomb. These sentiments pervade the community, and bear upon the jury-box. It is deemed unnecessary to adduce particular cases, in confirmation of these remarks. They abound in the books, and every one's own observation will furnish him with some. The terrors then denounced by the laws, are comparatively inefficacious, when such are seen to be the strong probabilities of escape, with entire or partial impunity. There is one other consideration which is frequently urged with powerful effect upon juries, where the evidence is only circumstantial, and there are but few cases in which it is not more or less so; and which it seems should also have its due and more appropriate weight with legislators, in deliberating upon the propriety of abolishing all capital punishment. It is that this penalty once inflicted, is irreparable. The fate of the prisoner is sealed forever—and that by the judgment of a tribunal composed of men liable to err—upon testimony which may be suborned—upon circumstances which other circumstances not proved might have satisfactorily explained—upon evidence, in short, which all experience has proved to be fallible. The records of criminal trials show very many cases of persons doomed to death, who have afterwards proved to have been innocent. In England, there are no less than fourteen instances known, (as stated by Mr. Fitzroy Kelly, in Parliament,) since the beginning of this century, of innocent persons executed. In our own country, and within our own times, several such cases of judicial murders have occurred. These facts, though their appeal is made most properly, and it appears, with irresistible force to the law-making power, find their way, improperly, and despite himself, to the mind of every intelligent and reflecting juror. Such an one feels the responsibility of his position, as a weight upon his conscience, almost too heavy to be borne. He shrinks in instinctive horror, from a verdict of murder in the first degree, and is ready to turn off the sword of justice from the most depraved offenders. The same reasons operate upon the executive, to whom our constitution delegates the power of pardon. Feeling that on his sole *fiat* hangs the destiny—perhaps the eternal destiny of a fellow being—appealed to in accents of distress and agony, by the unfortunate though guilty victim, and by his relatives and friends—worked upon, it may be, by the tears of a heart-broken parent—his office is indeed far from enviable. He too is a man, with the nature and feelings of a man, and he must be highly gifted above other men, or brutalized beneath them, if he could on all occasions, double-lock the portals of his heart against such appeals, and listen only to the mandate of stern, unbending justice.

How imperfectly then, does the example of this punishment operate to deter men from the commission of this crime, accompanied as it is, with so many multiplied chances of escape. Indeed, in the present constitution of society, we repeat, no crime is so likely to escape its due and proportionate punishment, as that highest one, to which our law has affixed the severest of penalties.

Let the punishment be commuted to solitary imprisonment at hard labor for life, and these chances of partial or entire impunity, will no longer exist. The terror of the doom, joined to the moral certainty of its infliction, will be ample to deter offenders. The natural horror felt for the crime, will not be lost in the minds of prosecutors, witnesses, jurors and judges, in sympathy for the accused. The mercy of the executive will not be extended, except in those cases in which, from after-discovered evidence, the innocence of the convict has been made apparent, or where, after the probation of years, his moral reformation and repentance are placed beyond a reasonable doubt.

GEO. SHARSWOOD,  
THADDEUS STEVENS.

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## A N A C T

To provide for the more effectual punishment and prevention of crimes heretofore punishable with death.

*SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same:* That the punishment of death by law is hereby abolished, and imprisonment for life in solitude and at hard labor, be, and is hereby substituted therefor, in all cases now punishable with death.

*SECTION 2.* On conviction of any person of any crime, thus punishable, he shall be thereupon deemed with respect to all contracts, to the bonds of matrimony, to all rights of property, and to all civil rights and relations of what nature soever, dead, in all respects as if his actual natural decease had taken place at the time of such conviction.

*SECTION 3.* That the governor be, and he is hereby authorized and required, in all cases where persons have been convicted of crimes heretofore punishable with death, and now awaiting the execution of the law, to commute the same to imprisonment for life, at hard labor and solitary confinement.